

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
MCALLEN DIVISION

**ENTERED**

July 19, 2018

David J. Bradley, Clerk

OCIEL CASTANEDA,

Petitioner,

VS.

LORIE DAVIS,

Respondent.

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MISC. ACTION NO. 7:17-MC-01836

**ORDER ADOPTING REPORT AND RECOMMENDATION**

Pending before the Court is Petitioner Ociel Castaneda's federal habeas motion construed as a motion pursuant to 28 U.S.C. § 2254; which had been referred to the Magistrate Court for a report and recommendation. On June 24, 2018, the Magistrate Court issued the Report and Recommendation, recommending that Petitioner's request to proceed *in forma pauperis* with respect to this action, No. 7:17-MC-01836, be **DENIED** as moot. Further, that the Clerk of the Court be directed to close Case No. 7:17-MC-01836 and **CONSOLIDATE** Petitioner's § 2254 proceeding filed in this case, with Case No. 7:18-CV-00017 as the lead case, pursuant to Federal Rule of Civil Procedure 42(a). The time for filing objections has passed and no objections have been filed.

Pursuant to Federal Rule of Civil Procedure 72(b), the Court has reviewed the Report and Recommendation for clear error.<sup>1</sup> Finding no clear error, the Court adopts the Report and Recommendation in its entirety. Accordingly, it is hereby ORDERED that Petitioner's request

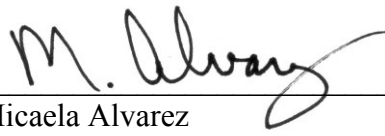
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<sup>1</sup> As noted by the Fifth Circuit, "[t]he advisory committee's note to Rule 72(b) states that, '[w]hen no timely objection is filed, the [district] court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" Douglas v. United Servs. Auto. Ass'n, 79 F.3d 1415, 1420 (5th Cir. 1996) (quoting FED. R. CIV. P. 72(b) advisory committee's note (1983)) *superseded by statute on other grounds* by 28 U.S.C. § 636(b)(1), as stated in ACS Recovery Servs., Inc. v. Griffin, No. 11-40446, 2012 WL 1071216, at \*7 n.5 (5th Cir. Apr. 2, 2012).

to proceed *in forma pauperis* with respect to his initially filed action, No. 7:17-MC-01836, be **DENIED** as moot. Further, that the Clerk of the Court close Case No. 7:17-MC-01836 and **CONSOLIDATE** Petitioner's § 2254 proceedings, with Case No. 7:18-CV-00017 as the lead case. A copy of this order shall also be entered in Case No. 7:18-CV-00017.

IT IS SO ORDERED.

DONE at McAllen, Texas, this 18th day of July, 2018.

  
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Micaela Alvarez  
United States District Judge